SUMMIT COMPANY (M) SDN. BHD. v. NOKKO PRODUCTS (M) SDN. BHD.

[F.C. (Salleh Abas L.P, Wan Suleiman & Seah F.JJ.) September 22, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 311 of 1983]

Practice & Procedure – Service of writ at registered address of Company – Change of address of Company duly notified to Registrar of Companies – Companies Act 1965, s. 120 – R.H.C. 1980, O.62, r.4(1)(a).

In this case the appellants had purported to serve a writ on July 1 1982 on the respondent company at an address which they believed to be the registered address of the company. The respondent company had in fact changed its registered address and the change had been notified to the Registrar of Companies on February 20, 1982. The notification of change was not however entered into the register until September 24, 1982. When no appearance was entered to the writ the appellants obtained judgment in default and execution proceedings were taken. The respondents when they came to know of the writ subsequently applied to have the writ set aside. The learned trial judge gave judgment for the respondents and the appellants appealed.

Held dismissing the appeal: (1) the effective date of the change of the registered address is the date of the lodgment of the notice to the Registrar of Companies;

(2) the learned trial Judge was correct in holding that there had been no good service of the writ in this case and in setting aside the judgment.

Cases referred to:

(1) *P.T. Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.* [1958] M.L.J. 113.

(2) *Kwong Kum Sun Chan Merchant* v. *Ahong Construction Co. (Malaya) Ltd.* [1968] 1 M.L.J. 29.

HIGH COURT.

Wong Ngee Heong for the defendants/applicants.

Matthias Chang Wen Chieh for the plaintiffs/respondents.

Cur. Adv. Vult.

George J.: The provisions for the service of a writ against a corporation is found in Order 62 rule 4. In the instant case the plaintiffs sought to effect the service of the writ pursuant to rule 4(1)(a), on the 1st July 1982, by leaving a copy of it at No. 42-2A City Tower, Jalan Alor, Kuala Lumpur, thought by the plaintiffs to be the registered office of the defendants.

It turned out that unknown to the plaintiffs the defendants had changed the situation of its registered office from No. 42-2A City Tower to Room 1201, 12th Floor, Komplek Selangor on February 8, 1982. Pursuant to the requirements of Section 120 of the Companies Act the company had duly notified the Registrar of Companies of the change by lodging with the Registrar on February 24, 1982 the requisite Form 44 in which the particulars of the change of the registered office was set out. It was said that the registration of this change was not effected until September 24, 1982. (See Exhibit JK1 to the affidavit of James Khor affirmed on July 5, 1983). What was to be understood by that was not clear as I was not aware that a register was maintained by the Registrar of Companies for registering the particulars set out in a Form 44 [as is maintained for example for registering charges created by a company (see sections 108 and 111 of the Companies Act)]. It perhaps meant that the Form 44 having been lodged on February 24, 1982 was not placed as an enclosure in the file pertaining to the company until September 24, 1982! What I have accepted is that anyone making a search in the file pertaining to the company at the office of the Registrar of Companies prior to September 24, 1982 would have been left with the impression that the registered office of the defendant company continued to be at the said City Tower.

Having left a copy of the writ at No. 42-2A and when no appearance was entered the plaintiffs moved the Court for and entered judgment in default for the amount claimed, interest and costs. That was followed by execution proceedings – land belonging to the defendant company was attached. The defendants claimed they only came to know that a writ had been issued against them as a result of the attachment of the land. They took out a summons to set aside the judgment on the grounds they had not been served with the writ. For reasons not make known to me service of the summons was not effected for almost a year. The summons was adjourned on a number of occasions on the ground that it had not been served.

On behalf of the plaintiffs it was contended that the registered office of the defendants continued to be at No. 42-2A City Tower until "the registration" of the change of address and since "the registration" took place only on September 24, the registered office of the company continued to be at No. 42–2A City Tower until that date and that therefore leaving a copy of the writ at that address was good service.

Section 119 of the Companies Act provides for a company to have a registered office. Section 120 provides for the Registrar to be notified of the situation of the registered office and of any change of the situation of such office within one month after the date of incorporation of the company or of any such change as the case may be. In my view the change of the situation of the registered office (which is what we are concerned with in the instant case) takes effect on the day that the actual change is effected and not on the day of lodgment of the section 120 notice (since that can be done within 1 month of the actual change) or on the date of "registration" of the section 120 notice if such an event takes and took place. At best, it may be argued that until the section 120 notice is given to the Registrar the company would be stopped from relying on the fact of change of registered office.

On July 1, 1982 No. 42 – 2A City Tower was not the registered office of the company and accordingly leaving a copy of the writ at that address was not good service. And accordingly the defendants were entitled to have the default judgment set aside *ex debito justitiae*. That the defendants having taken out the summons did not have it served on the plaintiffs for as long as they did has not had the effect of prejudicing this right. The judgment was set aside and I ordered the plaintiffs to pay the costs of and incidental to the application to set aside the judgment.

The plaintiffs appealed against the above judgment.

FEDERAL COURT.

Matthias Chang Wen Chieh for the appellants.
Wong Ngee Heong for the respondents.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the Judgment of the Court): The appellants sought to effect service of a writ pursuant to Order 62 rule 4(1)(a) on 1st July 1982 by leaving a copy of it at No. 42–2A City Tower, Jalan Alor, Kuala Lumpur, which the appellants believed to be the registered address of the respondent company.

Unknown to the appellants respondents had changed the situation of its registered office from the aforementioned address to Room 1201, 12th Floor Komplek Selangor on February 8, 1982. In accordance with the requirements of section 120 of the Companies Act respondents had duly notified the Registrar of Companies of the change by lodging with the Registrar on February 20, 1982 the requisite Form 44 in which the particulars of the change of registered office had been set out. This notification of change was not entered into the register, according to the Registrar's letter annexed as an exhibit to the affidavit of appellants' solicitor, until some 7 months later i.e. on September 24, 1982.

It is not clear whether there was indeed a register maintained by the Registrar of Companies into which is entered the particulars from the Form 44 which respondents have sent him or whether as the learned trial Judge conjectured, the alleged "registration" was merely emplacement as an enclosure in a file pertaining to the respondent company.

To proceed with the facts, appellants, having left a copy of the writ at No. 42–2A, no appearance having been entered by respondents, moved the Court for and entered judgment in default for the amount claimed. Execution proceedings then followed and land belonging to the respondent company was attached. It was then, according to respondents, that they came to know of the writ. They then took out a summons to set aside the writ on the grounds that they had not been served.

Section 119 of the Companies Act requires a company to have a registered office within Malaysia to which all communications and notices may be addressed. Section 120 provides for the Registrar to be notified of the situation of registered office and of any change of the situation of such office within one month of the incorporation of the company or such change, as the case may be.

The learned trial Judge took the view that the change of situation of the registered office took effect from the day that the actual change was made, and not on the day of the lodgment of the notice required by section 120, (since that can take up to one month after the actual change), and also not on the date of the registration of such notice, if indeed registration had taken place. He therefore held that leaving a copy of the writ at No. 42–2A City Tower was not good service and set aside the judgment.

In England notice of change in the situation of

the office must be given to the Registrar of Companies within fourteen days under the 1948 Companies Act, 1972, section 9(3). A third party without actual knowledge is not affected unless the notice is published within 15 days of the change, and even within the 15 days, is not affected if he is unavoidably prevented from knowing of the change (European Communities Act, 1972, s. 9(4). (See Modern Company Law by L.C.B. Gower, 4th Edn. P. 312, Footnote 23 and pp. 499, 500).

Having drawn our attention to the English statute law, counsel for appellants submitted that the effective date of change of address would be the date of registration, perhaps by analogy with the English requirement for gazetting.

Such stringent requirements governing change of situation of registered office of companies may perhaps have been dictated by the United Kingdom's entry into the larger European Community and the need to facilitate dealings between firms in U.K. and those of other E.E.C. countries.

Two authorities were cited to us which are not quite helpful, because the facts therein are materially different.

In *P.T. Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.*[1] the plaintiffs had served the writ at the wrong address because of mis-information from the Registrar of Companies, who had registered the change of address by the defendants over two years earlier.

In *Kwong Kum Sun Chan Glass Merchant* v. *Ahong Construction Co. (Malaya) Ltd.*[2] the defendants had moved, leaving a notice at the main door of the old premises regarding the change of address but the writ was served within the period of one month he had under section 120 of the Companies Act 1965 to notify the Registrar, no such notification having yet been sent.

Mr. Wong for the respondents maintains that the date of the lodgement of the section 120 notice to the Registrar should be the effective date. We are inclined to agree with him. Whether the particulars are in due course (and as in this case very much later), entered into any register, is in our view irrelevant. Once the notice of change under section 120 has been lodged, anyone who wishes to ensure that a writ is served at the proper address can on payment of the prescribed fee avail himself of his right under section 11(2)(a) of the Act to "inspect any document filed or lodged with the Registrar".

We would therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Suhaimi Khor Zulkifli & Chang; Low & Lee.*

SABARUDIN BIN SHAMSUDDIN v. AISHAH BTE. KUNTOM

[A.C.J. (Abdul Razak J.) February 25, 1984]

[Johore Bahru – Civil Appeal No. 7 of 1982]

Practice & Procedure – Appellate court allowing appeal against finding of facts by learned magistrate – Meaning of "demeanour".

The respondent lent to her married colleague money. She was single. They, however, became close friends. When their relationship ended she became infuriated and claimed for the sum of $8,142/- against him. In support of her case, the respondent produced an I.O.U. Chit (P.1) and her own account of the loans (P.2). P.1 showed the sums given by her from July to October 1977 totalling $2,481/-. P.2 showed those given also from July 1977 but to September 1978 totalling $8,402/- including the sums shown in P.1. The learned magistrate found that P.2 was corrcborative of the respondent's oral evidence and gave judgment in favour of the respondent. The appellant appealed.

Held, allowing the appeal: (1) the learned magistrate had not apparently considered that they being in duplicate there was a serious contradiction between P.1 and P.2 bearing on their consistency and accuracy;

(2) the learned magistrate seemed to have thrown caution to the wind altogether, as if forgetting that if P.1 and P.2 were in serious contradiction then all that she had to rely upon was the respondent's demeanour;

(3) under the circumstances a fair decision between the parties would be that the sum of $3,558/- be apportioned proportionately between them, and that it be halved and added to the sum of $2,016/- shown to be requested by the appellant, giving a round figure of $4,000/-;

(4) costs should also be halved.

Obiter dictum: ". . . demeanour may be confused with the ability to convince another how pathetic one's plight is which can never form a part of judicial decision. Demeanour may mean the ability to answer a question at the spur of the moment which may in fact turn out later to be false. But whichever form it takes, it can never replace or substitute for facts that are established or are reasonably